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Letter dated 24 July 2018 from the Chargé d'affaires a.i. of the Permanent Mission of Poland to the United Nations addressed to the Secretary-General

I have the honour to submit herewith a summary of the open debate held by the Security Council on 17 May 2018 on upholding international law within the context of the maintenance of international peace and security, prepared by Poland as the President of the Security Council in May 2018 (see annex).

I would like to take this opportunity to express gratitude for your contribution to the debate, through the remarks delivered by your Chef de Cabinet, Ms. Maria Luiza Ribeiro Viotti.

I would be grateful if the present letter and its annexes could be circulated as a document of the Security Council.

(*Signed*) Paweł **Radomski**
Chargé d'affaires a.i.

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Annex to the letter dated 24 July 2018 from the Chargé d'affaires a.i. of the Permanent Mission of Poland to the United Nations addressed to the Secretary-General

Summary of the open debate held by the Security Council on 17 May 2018 on upholding international law within the context of the maintenance of international peace and security

Introduction

The open debate on upholding international law within the context of the maintenance of international peace and security was held by the Security Council on 17 May 2018, during the presidency of Poland. It featured briefings by the Chef de Cabinet, Ms. Maria Luiza Ribeiro Viotti, on behalf of the Secretary-General, the former President of the International Court of Justice, Judge Hisashi Owada, on behalf of the President of the International Court of Justice, and the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron.

The debate, chaired by the President of the Republic of Poland, Mr. Andrzej Duda, was focused on three main themes (see the concept note, S/2018/417/Rev.1, annex):

- Promoting the peaceful settlement of disputes, including through the employment of appropriate means set forth in, inter alia, Chapter VI of the Charter of the United Nations: diplomacy, calling for negotiation, enquiry, good offices, mediation, conciliation, arbitration, judicial settlement in particular by the International Court of Justice, resorting to regional agencies or arrangements as well as to other peaceful means, with a view to preventing and ending conflicts.
- Increasing respect for international law, in particular international human rights law and international humanitarian law, during conflicts in the context of the emergence of new kinds of threats therein and the evolving nature of conflicts.
- Upholding accountability, in particular for the most serious violations of international humanitarian law and human rights law, including by considering steps towards facilitating the investigation and prosecution of the individuals responsible for them, with full respect for due process and the rights of the defence, and supporting efforts aimed at developing, as appropriate, national or international investigative, prosecutorial and witness protection capacities.

The importance attached to those issues was demonstrated by the number of participants at the meeting, which included 72 speakers representing United Nations Member States, including several at the high political level, and observers to the United Nations. Many of them, apart from voicing support for and commitment to the above-stated goals and offering remarks of a more general nature, as well as assessing selected situations, commented on the role that the Security Council, in particular, and the wider United Nations membership play and could play in respective areas. While acknowledging the contribution of these actors, the debate participants often called for their further engagement and activity, providing actionable ideas in that regard.

This summary attempts to capture those views and the proposals that emerged from the debate, the full record of which is available on the Security Council website (S/PV.8262). It does not necessarily represent endorsement of certain postulates.

Views and proposals of the members of the Security Council

Promoting the peaceful settlement of disputes

- Hold, on a more systematic basis, early discussions on situations involving a risk of violent conflict, make better use of United Nations and regional mechanisms' early-warning tools and strengthen cooperation and partnerships with regional and subregional organizations to bring insight and perspectives on emerging threats and conflicts, prevent and respond to them and promote understanding, peace and reconciliation.
- Elaborate a test-based algorithm that could serve as an informal guide for Council members on how to properly and transparently fulfil in a timely manner the Council's primary responsibility with regard to conflict situations, including acts of aggression.
- Request the United Nations Secretariat to prepare an analytical report on action taken by the Council before and after conflicts in order to detect weak points and help to avoid similar gaps and mistakes in the future.
- Request a report by the Secretary-General on the various modalities of dispute settlement included in Chapter VI of the Charter of the United Nations.
- Request advisory opinions of the International Court of Justice to clarify certain legal issues involved in situations before the Council.
- Call on States to settle their disputes by peaceful means and recommend particular means to them, taking into consideration the fact that, as enshrined in Article 36 of the Charter, "legal disputes should as a general rule be referred by the parties to the International Court of Justice"; in case of non-compliance with the Court's ruling, make recommendations or decide upon measures to be taken to give effect to it.
- More frequently task the Secretary-General with trying to assist States to reach a settlement by his good offices, support the initiatives of States and other stakeholders, including regional bodies, in this respect or establish a subsidiary organ or a peacekeeping operation with a relevant mandate for this purpose.

Increasing respect for international law

- Act in accordance with the applicable international law and as a defender of the integrity of the norms that form the collective security system, promote them and abide by them with fairness, uniformity and consistency.
- Ensure that respect for international humanitarian law, international human rights law and other relevant rules, norms and standards is included in accountability processes and peacekeeping operations and political missions mandates; work with other parts of the United Nations system, in particular the Peacebuilding Commission, the Rule of Law Coordination and Resource Group and the Rule of Law Unit, to ensure the sustainability of rule-of-law assistance measures after the termination of relevant United Nations operations.
- Support the Geneva-based intergovernmental process on strengthening respect for international humanitarian law.
- If necessary, take collective, proportional and reasoned action in cases of violations of international law constituting a breach of peace or a threat thereto, including by introducing or updating, when appropriate, targeted sanctions, while ensuring that they are reconciled with the rule of law, due process and

human rights, and that ways to avoid their undesirable consequences are considered.

- Explain the content of Security Council resolutions through such efforts as briefings to the Member States and the publication of more user-friendly information on the main features of proposed sanctions regimes, in addition to closely monitoring the implementation of such resolutions.

Upholding accountability

- Support the establishment, where appropriate, of accountability mechanisms, truth and reconciliation commissions and properly sequenced transitional justice strategies, including prosecutions, reparations and institutional reform, ensuring access to justice for those who often suffer disproportionately in conflict, in particular women, children and persecuted religious or ethnic groups.

- Develop and publicly adopt objective criteria to asses and, where appropriate, consider steps to be taken with respect to all credible allegations of international crimes passing a certain threshold, and refer possible violations of international law to appropriate judicial organs for further action.

- Refrain from voting against a credible draft resolution on timely and decisive action to end the commission of genocide, crimes against humanity or war crimes, or to prevent such crimes; refer to the International Criminal Court situations in which such atrocities are being committed and where the national authorities bearing the primary responsibility for prosecuting those crimes are not in a position to do so.

- Develop structured dialogue and cooperation with the International Criminal Court; follow up on the work of the Court in the case of Security Council referrals, including by working to ensure that they are accompanied by ongoing support with respect to the execution of arrest warrants and the provision of adequate financial resources; demonstrate support for the Court in instances of non-cooperation of States and consistently apply guidelines on contact with persons who are subject to arrest warrants and summonses.

- Strengthen the rule-of-law mandate components of United Nations political and peacekeeping missions, including assistance in investigations or the arrest of those suspected of the most serious crimes of international concern.

Views and proposals of United Nations Member States

Promoting the peaceful settlement of disputes

- Build partnerships towards enhancing capacities for early warning and response, as well as national expertise in mediation and preventive diplomacy.

- Settle disputes by peaceful means, in good faith and with goodwill, in such a manner that international peace and security as well as justice are not endangered, including through dialogue, substantive negotiations, recourse to regional bodies or arrangements and arbitration by judicial mechanisms, primarily the International Court of Justice; accept the jurisdiction of the Court and give consideration to withdrawing reservations to it.

- Support the efforts of the Secretary-General, the Security Council and others in support of political processes, mediation, peaceful conflict resolution, peacebuilding and sustaining peace; refrain from conduct that would sabotage peaceful settlement of a dispute.

Increasing respect for international law

- Comply with the provisions of the Charter of the United Nations, including those regarding the sovereignty and territorial integrity of States as well as the use of force or threat thereof; react to any violations of the Charter that constitute a threat to international peace, security and stability, such as annexation, which in particular should not be recognized.
- Ratify and encourage the ratification of instruments of international human rights and humanitarian law without reservations, withdraw the reservations already made and keep in mind that given the emergence of new threats and challenges it may be necessary to further develop the legal framework in order to better deal with them.
- Promote the international rule of law, a rules-based international order and respect for the international legal framework critical to the maintenance of international peace and security, as well as international human rights law and international humanitarian law, including by engaging with the International Committee of the Red Cross initiative on strengthening respect for international humanitarian law.
- Increase capacity-building to enhance wider appreciation of and respect for international obligations in the context of peace and security, including by enhancing the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

Upholding accountability

- Strengthen national accountability mechanisms, with full respect for due process and the rights of the defence, including building investigative, prosecutorial and witness-protection capacities, with a view to preventing and prosecuting atrocity crimes and using every legal tool available, including universal jurisdiction, in order to close the accountability gap.
- Engage with the United Nations Secretariat during the process of establishing and supporting accountability mechanisms to help to ensure that the framework for the establishment of any mechanism conforms with applicable United Nations standards and policies; support such mechanisms, ensure that they are adequately resourced, including by contributing to relevant trust funds, and that political considerations are not allowed to undermine their independence and impartiality in the conduct of their proceedings.
- Comply with judicial orders, arrest warrants and requests for investigative cooperation of the existing international courts, such as the International Criminal Court, use soft and hard forms of leverage to convince others to do likewise, support fugitive-related investigations, enforce sentences against convicted persons and assist with the relocation and protection of vulnerable witnesses.